United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 873

Case No. 974: PATEL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 1 May 1997, Bhaichand Patel, a former staff member of the United Nations, filed an application requesting the Tribunal, inter alia:

"[To order that]:

(i) He ... be paid Indian Rupees 150,000 ($4,225) as reimbursement by the Secretary-General for storage charges for his household effects due to him as intended by the Joint Appeals Board;

(ii) He ... be paid daily subsistence allowance at 100 per cent rate for New York for the period 30 November 1993 through 23 January 1994 instead of the 50 per cent rate recommended by the Joint Appeals Board;

(iii) He ... be paid costs of this application. ...."

Whereas the Respondent filed his answer on 3 December 1997;

Whereas the Applicant filed written observations on 20 March 1998;

Whereas, on 6 July 1998, the Tribunal put questions to the Respondent, to which he provided answers on 9 July 1998, and on which the Applicant commented on 20 July 1998;

Whereas, on 23 July 1998, the Respondent submitted an additional document;

Whereas, on 28 July 1998, the Applicant provided his comments on the Respondent's submission;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations, Office of Public Information, Press and Publications Division, in New York on 1 September 1971, on a fixed-term appointment for one year, as an Associate Information Officer at the P-2 level. He received two more fixed-term appointments, until 1 March 1974, when his appointment became permanent. The Applicant received promotions to the P-3, P-4 and P-5 levels, with effect from 1 April 1974, 1 April 1977 and 1 August 1983, respectively. On 1 February 1986, the Applicant was reassigned to New Delhi, as Director of the United Nations Information Centre (UNIC). On 1 July 1990, the Applicant was promoted to the D-1, step V level. On 24 March 1994, the Applicant was reassigned to Manila as Director, UNIC. On 31 January 1997, the Applicant retired from the Organization.

In a memorandum dated 26 August 1993, the Director of the Department of Public Information (DPI) informed the Applicant that he would be reassigned to New York, with effect from 1 October 1993. The Director, DPI, further stated "please make the necessary arrangements for your move back to Headquarters by 1 October 1993." On 21 September 1993, the Applicant sought from the Executive Officer, DPI, authorization to charge the costs of the packing of his household effects to a UN account. By memorandum dated 16[sic] September 1993, DPI authorized the Applicant to do so, and provided him with an account number to which he could charge his packing costs.

On 28 September 1993, the Assistant Secretary-General for Public Information informed the Applicant that he was being reassigned as Director, UNIC, in Manila, with effect from 1 October 1993. He was to assume his duties "as soon as possible but no later than 18 October", and he should cease to exercise the functions of Director, UNIC, New

Delhi after 30 September 1993. In a reply dated 29 September 1993, the Applicant requested reconsideration of such assignment, because he preferred to be in New York for family reasons. He stated that he would be willing to go on a mission while awaiting a post at Headquarters. Thus, starting in October, the Respondent sought a mission assignment for the Applicant.

On 8 November 1993, the Chief, External Relations Service, Promotion and External Relations Division (PERD), DPI, wrote a memorandum to the Acting Director of UNIC, New Delhi, asking that he convey to the Applicant that "any travel to New York at this time is your personal decision and responsibility" and "[t]here is no DPI/Secretariat authorization or commitment in this matter". (Emphasis in the original.) On 29 November 1993, the Applicant wrote to the Director, PERD/DPI, stating that he "arrived in New York on 11 November 1993 at [his] own expense to rejoin [his] family" and that he would "be grateful if some duties and responsibilities are assigned to [him] at Headquarters."

On 3 January 1994, the Officer-in-Charge, DPI, wrote to the Director, Personnel Service, OHRM, seeking guidance concerning the status of the Applicant, "who has exhausted his annual leave balance." In a communication dated 4 January 1994, the Officer-in-Charge, PERD, DPI, instructed the Applicant to assume his assignment with UNIC Manila no later than 1 February 1994, as no other mission assignment had materialized. In that same communication, the Applicant was informed that since he was being reassigned from one field duty station to another, his travel authorization would be from New Delhi to Manila. He was further informed that since it was "normal practice to arrange official briefing programmes at Headquarters for field colleagues who may be in New York on personal visits," he could attend a five-day briefing programme in New York before his departure for Manila. During the *last* week of January 1994, the Applicant attended such a briefing programme. On 28 January 1994, the Applicant was informed that his departure for Manila was to be postponed. On 15 March 1994, the Applicant was instructed to proceed to Manila. On 24 March 1994, the Applicant arrived in Manila. The Applicant was paid daily

subsistence allowance for the time he spent in New York from 1 February 1994, until his departure for Manila.

On 17 March and 22 April 1994, the Applicant wrote memoranda to the Officer-in-Charge, Staff Administration and Monitoring Service (SAMS), OHRM, requesting that the period between the time he left his post in New Delhi and the time he was reassigned to Manila on 30 January 1994, be considered "special leave with full pay" rather than as "annual leave". On 18 May 1994, the Officer-in-Charge, SAMS, OHRM, informed the Applicant that "any period of time spent outside your duty station, pending your reassignment to another duty station, was not considered as 'official' and had therefore to be treated as annual leave."

On 23 May 1994, the Applicant requested the Secretary-General to review the administrative decision of 18 May 1994.

On 15 August 1994, having received no reply to his request for review, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 15 June 1995. Its recommendations read as follows:

"Recommendations

52. ...

(a) That the Administration pay the Appellant the DSA [daily subsistence allowance] in New Delhi for the period from 1 October 1993 through 10 November 1993;

(b) That the Administration restore the annual leave charged to the Appellant from 30 November 1993 through 23 January 1994, and pay the Appellant 50% of the DSA in New York for this period;

(c) That the Administration reimburse the Appellant for the cost of his airfare from New York to Manila in March 1994; and

(d) That the Administration reimburse the Appellant for storage of his household effects through 24 March 1994, based on the cost of such storage in New Delhi.

53. The Panel recommends that the Appellant's other claims be rejected."

On 21 June 1995, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has noted the Board's findings that the Administration could not consider you as being on annual leave from 30 November 1993 to 23 January 1994. The Board further found you to be responsible for the following:

- Airfare, New Delhi to New York;
- Costs of shipment and related charges (and additional shipping and customs charges associated therewith) of household effects from New Delhi to New York;
- Storage of household effects in New York.

The Board found, on the other hand, that you should be entitled to reimbursement in respect of the following:

- Airfare, New York to Manila (March 1994);
- Shipment of household effects based on the cost of shipping such household effects from New Delhi to Manila;
- Storage of household effects, based on the cost of such storage in New Delhi, for the period September 1993 through 24 March 1994.

Based on the above findings, the Board recommends that you be paid the DSA in New Delhi for the period from 1 October 1993 through 10 November 1993; that the Administration restore your annual leave from 30 November 1993 through 23 January 1994 and that you be paid 50% of DSA in New York for this period. The Panel further recommends that you be reimbursed for the cost of airfare from New York to Manila (March 1994), for the storage of your household effects through 24 March 1994, based on the cost of such storage in New Delhi. The Panel rejects all other claims.

The Secretary-General accepts the Board's recommendations and has decided, accordingly, that you be reimbursed as recommended and that your leave records be adjusted accordingly. The Secretary-General takes no further action in your case."

On 1 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The application is timely and thus receivable because (a) the Applicant complains of the failure properly to implement the recommendations of the JAB that were accepted by the Respondent and (b) the Applicant made numerous efforts between 15 June 1995 and 25 March 1997 to resolve the matter with the Respondent.

2. The Respondent has misinterpreted the JAB's proper recommendation, adopted by the Respondent, concerning the amount to be paid to the Applicant for the storage of his household effects. The Applicant is entitled to the amount that it would have cost to store his goods in New Delhi from 9 November 1993, when he left New Delhi, until 24 March 1994, when he arrived in Manila. The Respondent incorrectly paid him the amount it would have cost to store his household effects only from 1 February 1994, i.e., the date that he was instructed to assume his duties in Manila before such date was postponed, through 24 March 1994. The Chairman of the JAB agrees with the Applicant as to the Applicant's interpretation.

3. The Respondent incorrectly determined that the cost of storing the Applicant's household effects in New Delhi would be $275 per month. The appropriate amount for storing the Applicant's household effects from 11 November 1993 to 24 March 1994, according to the company that had packed them, as authorized by the Respondent, would have been Indian Rupees 150,000, or US$ 4,225.

4. The JAB erred by recommending that the Applicant be paid 50 per cent DSA, rather than 100 per cent DSA, for the period between 30 November 1993 (when he returned

from annual leave) and 24 January 1994 (when he began to receive 100 per cent DSA).

Whereas the Respondent's principal contentions are:

1. The Applicant's claims are time-barred and therefore not receivable. The application, dated 1 May 1997, contests the Respondent's decision of 21 June 1995, and thus falls outside the 90 days prescribed by Article 7, paragraph 4 of the Statute of the Tribunal.

2. The Applicant is not entitled to 100 per cent DSA from 30 November 1993 through 23 January 1994, rather than the 50 per cent he received, because he had travelled to New York with the understanding that the Respondent had not authorized such travel as official.

3. The Applicant was adequately compensated for the storage of his household effects from 1 February 1994 through 24 March 1994.

The Tribunal, having deliberated from 6 to 31 July 1998, now pronounces the following judgement:

I. The Applicant appeals the decision by the Secretary-General, accepting the recommendations of the Joint Appeals Board (JAB), to pay the Applicant 50 per cent of the daily subsistence allowance (DSA) in New York for the period from 30 November 1993 through 23 January 1994, and the Respondent's failure to properly implement his decision to reimburse the Applicant for the costs of the storage of his household effects based on the cost of storage of such household effects in New Delhi through 24 March 1994.

II. The Applicant claims that he should have been compensated in the amount of $4,225 as estimated costs for the storage of his household effects, on the basis of an estimate he provided to the Respondent, instead of the amount of $500 paid to him on the basis of an

estimate for the storage of his goods that had been solicited by the Respondent. He also submits that he should have been paid 100 per cent of DSA in New York for the above-stated period.

III. Prior to considering the case on the merits, the first issue that must be determined by the Tribunal is whether the Applicant's claims are time-barred. The relevant provisions of the Statute of the Tribunal dealing with the time limits for a staff member to file an application to the Tribunal are article 7, paragraphs 2 and 4, which read as follows:

> "2. In the event of the joint body's recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:
>
> (a) Rejected the recommendations;
> (b) Failed to take any action within the thirty days following the communication of the opinion; or
> (c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.
>
> ...
>
> 4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. ..."

IV. The Applicant admits that he received the Secretary-General's decision on the JAB's recommendation on or about 21 June 1995. The Applicant filed his application with the Tribunal on 1 May 1997, without having requested the Tribunal for any extensions of the time limit for filing an application. Accordingly, with respect to the Applicant's claim for payment of DSA, he clearly filed his application beyond the time limits set forth in article 7, paragraph 4 of the Tribunal's Statute. The Applicant has not presented any compelling reason to suspend the time limits, nor does the Tribunal find any such compelling reason. Therefore,

the Tribunal concludes that the claim for the payment of DSA is time-barred.

The claim for the payment for costs of storage of the Applicant's household goods, on the other hand, was the subject of on-going communications between the parties regarding such payment. The Applicant was informed on 27 January 1997, that he would receive $500 as payment for the costs of his storage, despite his having provided the Respondent with an estimate of $4,225. In response to his enquiries to the Administration as to why he received only $500, he was informed, on 31 January 1997, that such determination had been made by the Under-Secretary-General, DAM. On 3 February 1997, the Applicant asked the Under-Secretary-General , DAM, for clarification of the matter. Having received no reply, the Applicant filed his application with the Tribunal on 1 May 1997. Accordingly, the Tribunal finds that the Applicant's claim relating to the costs for storage of his household goods is not time-barred.

V. The Applicant's claim for the reimbursement of the cost of storage of his household goods arises from a dispute between the parties regarding the implementation of the Secretary-General's decision to accept the JAB's recommendation "that the Administration reimburse the Applicant for storage of his household effects through 24 March 1994, based on the cost of such storage in New Delhi."

The Tribunal interprets that recommendation as finding that the Applicant was entitled to reimbursement for the cost of storage of his household effects, based on the cost of such storage in New Delhi, from 9 November 1993 through 24 March 1994.

The Respondent paid the Applicant only $500 based on an estimate of the cost of storage for the period from 1 February to 24 March 1994. The Respondent contends that the Applicant submitted an estimate for the cost of storage from an agent not authorized by the UN. In response to questions put by the Tribunal, the Respondent stated: "In New York, the UN has a contract with the general contractor Matrix Logistics International and it is up to Matrix to select their agents overseas. ... Our estimate of USD500.00 for the period

1 February - 24 March 1994 was based on the quotation from Matrix." The Applicant had submitted an estimate of storage charges in New Delhi, by the same forwarding and clearing agent that had packed and stored the Applicant's household goods during the period from 18 September to 9 November 1993.

The Respondent's argument that the agent whose invoice the Applicant submitted is listed by UNDP as an authorized agent in Bombay and not in New Delhi does not change the status of that company as a UN-authorized agent. In fact, it appears that the Respondent had authorized payment to that same agent for the packing and storing of the Applicant's household goods for the period from 18 September to 9 November 1993, which lends further support to the Applicant's claim that such agent was a UN-approved agent. The Applicant's claim for $4,225, less the $500 that he already received, is therefore well-justified.

VI. Accordingly, the Tribunal:

(1) Orders the Respondent to pay $3,725 to the Applicant.

(2) Rejects all other pleas.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah Taylor ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary